

**RODRIGUEZ O'DONNELL ROSS**  
**FUERST GONZALEZ & WILLIAMS, P.C.**  
ATTORNEYS AND COUNSELLORS AT LAW  
WASHINGTON. CHICAGO. MIAMI • NEW YORK. HOUSTON • LOS ANGELES

CARLOS RODRIGUEZ

DIRECT DIAL: 202-973-2999  
rodriguez@rorfgw.com

Admitted in New Jersey and DC

REPLY TO:

1211 CONNECTICUT AVENUE, N.W.  
SUITE 800  
WASHINGTON, D.C. 20036  
TELEPHONE 202-293-3300  
FACSIMILE 202-293-3307

COPY

20 NORTH WACKER DRIVE  
CHICAGO, ILLINOIS 60606  
TELEPHONE 312-372-7000  
FACSIMILE 312-372-1719

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1001 BRICKELL BAY DRIVE  
MIAMI, FLORIDA 33131  
TELEPHONE 305-350-5690  
FACSIMILE 305-371-8989

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1415 NORTH LOOP WEST  
HOUSTON, TEXAS 77008  
TELEPHONE 713-863-1496  
FACSIMILE 713-863-1497

5777 W. CENTURY BLVD.  
LOS ANGELES, CA 90045  
TELEPHONE 310-410-4414  
FACSIMILE 310-410-1017

45 ROCKEFELLER PLAZA  
NEW YORK, N.Y. 10111  
TELEPHONE 212-332-8136  
FACSIMILE 212-332-3401

October 10, 2003

Bryant L. VanBrakle  
Secretary, Federal Maritime Commission  
800 North Capitol Street, NW  
Washington, D.C. 20573

Re: C.H. Robinson, Inc. Petition for Exemption (Petition P9-03) ("CH Robinson Petition"); and  
National Customs Brokers And Forwarders Association of America, Inc. (Petition P5 -03)  
("NCBFAA Petition")

Dear Commissioners:

Our firm represents Agility Logistics US, Inc. ("Agility"), a 4PL logistics company, based in Franklin, TN. Agility was formed in 2001 and was previously the logistics operation for the major multinational Imperial Chemical Industries PLC ("ICI"). Agility was the winner of the annual ICI Petrochemicals and Polymers Business Excellence award on three separate occasions for land transport optimization, shipping innovation and materials handling development. These awards were judged from over 200 business entrants. Agility's customers are major players in the chemical industry together with companies spanning the mineral oil, vegetable oil, food and oil field industries. Agility's customer base in less than a year has increased by 75%, and includes: Foseco, Huntsman, National Starch, Uniqema, INEOS, Lucite International (UK) Ltd, EVC, Hickson and Welsh Ltd., among others. Therefore, Agility, in these comments, is providing a cargo interest view of these petitions, from mainly the perspective of American chemical manufacturers.

Agility supports these petitions.

**The CH Robinson Petition.** Our company, and our customers, American manufacturers and global shippers, routinely structure complex logistic transactions with ocean carriers, logistic companies, many of which are non-vessel operating common carriers ("NVOCCs"), and other vendors in the supply chain. We are very concerned that all of our vendors have optimum flexibility in dealing with our shippers in structuring these transactions. In view of substantial changes that have occurred in the shipping industry since the Ocean Shipping Reform Act of 1998, when Congress last considered changes to the Shipping Act of 1984, as amended, Agility, and the beneficial cargo owners which it serves, are of the strong opinion that the Commission

should exercise its discretion to allow exemptions along the lines of those filed by UPS (Petition P3-03), BaxGlobal (Petition P8-03) and C.H. Robinson (Petition P9-03). These types of companies that routinely offer shippers creative alternatives in logistics packages that include ocean components should have the same flexibility as any other service provider in the shipping arena. It is regressive and inefficient to restrict sophisticated and financially stable logistics/NVOCC companies by not allowing them to enter confidential contracts with their customers. Shippers want to have the ability to enter comprehensive supply chain management arrangements without the impediment of artificial bureaucratic restrictions. Agility has focused on the C.H. Robinson Petition for the reason that it does not attempt to restrict the exemption on the basis of arbitrary criteria. The exemption should not be based on the issue of whether companies are “asset-based” or “non-asset based”; the exemption should not be arbitrarily granted on the basis of whether a company has a minimum dollar amount of gross sales, or is publicly traded on an exchange. While C.H. Robinson would meet these arbitrary criteria in every way, as the only non-asset based company on the Fortune 500, Agility agrees with C.H. Robinson, that to protect shipper concerns and interest, that the valid and reasonable criteria for allowing this exemption should be:

- A. **Whether the NVOCC Provides Value-added services.** Review should include whether an NVOCC is offering its customers more than just ocean rates and charges; value-added services may be provided at various levels in a transportation transaction. Is the Petitioner integrating multi-transportation modalities, logistics, distribution services, warehouse, and supply chain management solutions to its list of services provided to its customers? and;
- B. **Whether the NVOCC is Financially Stable.** For an NVOCC that will be dealing with its customers on a confidential service contract basis, the review must also demonstrate a history of financial stability. An NVOCC must demonstrate to the Commission its long-term liabilities picture. As part of this analysis, in judging the impact of servicing long-term debt, a company should demonstrate ample resources for that purpose, so that its operations and commitments are not interrupted. This is important for shippers. In the legislative history of OSRA there was concern that NVOCCs had no capital investment at all in their businesses, in comparison with VOCCs, especially with regard to vessels, and shipping equipment, and, therefore, it was concluded that they should not have the ability to enter confidential service contracts. While we do not believe that an efficient NVOCC operation necessarily dictates that it be asset heavy, the Commission should instead look at the NVOCCs cash flow, its working capital, and at its investment in Information Technology, and supporting staff-i.e., its investment in people. These are important criteria to consider in order to safeguard the interests of shippers
- C. **Regulatory history of the Petitioner.** Obviously, the Commission should not be rewarding NVOCCs who historically have been consistently bad actors in the regulatory process, and who pose financial dangers to the shipping community.

Agility respectfully requests that the Commission employ these “real world” criteria in considering these exemptions.

**The NCBFAA Petition.** Agility further endorses the NCBFAA's Petition. Agility believes that its proposed changes result in regulations and policies that better reflect the significant changes which have occurred in the NVO/Logistics industry since Congress' review during the Ocean Shipping Reform Act of 1998 ("OSRA") which justify the changes to the Shipping Act of 1984, as amended ("the Act") through the Exemption process contained in the Act. It is noteworthy that former Chairman of the House Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation, Congressman Wayne Gilchrist, concludes in a supporting letter to Petition P3-03 (UPS) to the Federal Maritime Commission, dated September 15, 2003, that "[n]ow five years after enactment of OSRA, it is clear the US ocean shipping industry has changed dramatically." He further concludes, "[t]he current regulatory scheme, however, puts NVOCCs at a distinct disadvantage and should be revised." Agility, on behalf of American manufacturers of chemicals, agree with that assessment of the changes in the industry and that the Commission should exercise its exemption authority as provided in OSRA. It is in the best interest of American shippers.

It is clear that the Commission has the statutory authority to exercise this discretionary authority that will benefit all responsible segments of the ocean shipping industry. The NCBFAA Petition in basic terms is requesting the following:

1. An exemption for all NVOCCs opting to be exempt from the tariff filing requirements pursuant to Sections 8(a), (b), (d) and (e), and Sections 10 (b)(1), (2) (4). (7), (8) of the Act, or in the alternative;
2. If the Commission believes it does not have authority to provide the exemption noted in (1) above, that the Commission initiate a rulemaking procedure that would permit NVOCCs to establish and maintain "range rates"---i.e. rates one of which would be a maximum and the other rate to be a minimum rate for particular services.

Agility concurs with the NCBFAA that since OSRA there has been a fundamental change towards a market-based regulatory model, which emphasizes competition, efficiency and reliance on the marketplace. The NCBFAA has carefully documented through its members that VOCCs have largely moved away from tariffs and conduct business primarily through service contracts. Rates are negotiated on a case-by-case basis with shippers. Agility can confirm this. That is true for NVOCCs as well as for VOCCs. However, the VOCCs have generally opted out of the tariff system, but the NVOCC remains shackled to the tariff, with all its corresponding inefficiencies. This is also inefficient and burdensome, and detrimental to the American shipper community.

While on a theoretical plane tariffs are intended to prevent discrimination among shippers, the truth is that shippers do not consult tariffs. Shippers and NVOCCs negotiate transportation terms on a case-by-case basis. The use of tariffs by shippers is a myth whose time has come.

**Conclusion.** For all of the foregoing reasons, Agility, on behalf of the American chemical manufacturing companies and other U.S. beneficial cargo interests, joins in support of the Petition for Exemption filed by C.H. Robinson. Agility, and this important U.S. shipper base, also support the NCBFAA's Petition to eliminate tariff-publishing obligations altogether, or in the alternative, to provide NVOCCs the ability to publish minimum/maximum rates. Approval of these exemptions would bring the regulatory infrastructure closer to the realities of the shipping industry, and would greatly benefit U.S. shippers.

Respectfully submitted,

**RODRIGUEZ O'DONNELL ROSS  
FUERST GONZALEZ & WILLIAMS, P.C.**

By:   
Carlos Rodriguez, Esq.

Counsel for Agility Logistics US, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 10<sup>th</sup> day of October, 2003, served a copy of foregoing Comments by Agility Logistics US, Inc. upon the parties, named herein, by causing an original and **fifteen** copies thereof to be hand delivered to the following:

Mr. Bryant L. VanBrakle  
Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Room No. 1046  
Washington, D.C. 20573

Mr. Robert E. Gecielewski  
C.H. Robinson Worldwide, Inc.  
2803 Butterfield Road  
Oakbrook, Illinois 60523

Mr. Edward Greenberg, Esq.  
Galland, Karasch, Morse & Garfinkle  
1054 Thirty First Street, N W.  
Washington, D.C. 20007

A handwritten signature in black ink, appearing to read 'Eddie L. Edwards', is written over a horizontal line.

Mr. Eddie L. Edwards  
**RODRIGUEZ O'DONNELL ROSS**  
**FUERST GONZALEZ & WILLIAMS, P.C.**  
1211 Connecticut Avenue, N.W.  
Suite 800  
Washington, DC 20036  
(202) 293-3300 (Telephone)  
(202) 293-3307 (Facsimile)